

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
CLAIRE M. HOLMES, DECEASED }

For Appellant: William B. Adams
Certified Public Accountant

For Respondent: Mark McEvilly
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of th'e Franchise Tax Board in denying the claim of Claire M. Holmes, Deceased, for refund of personal income tax in the amount of \$322 for the year 1976.

Appeal of Claire M. Holmes, Deceased

The sole issue on appeal is whether appellant may reduce capital gain preference income by an amount equal to excess itemized deductions, and a personal exemption credit for which no tax benefit was realized.

On appellant's 1976 personal income tax: return she reported an adjusted gross income of \$54,526 and claimed itemized deductions totaling \$59,124, resulting in a negative taxable income and no tax liability. Appellant also reported preference income of \$17,815 in capital gains and \$2,571 in depletion allowance on her 1976 return, resulting in the payment of \$489 tax.

On October 3, 1979, an amended 1976 personal income tax return was filed by appellant's estate. On the amended return the capital gain preference income of \$17,815 was reduced by an amount equivalent to the \$4,598 in claimed itemized deductions which exceeded the adjusted gross income plus a \$2,250 personal exemption credit. It was claimed that because no tax benefit was received from these amounts, they should be used to reduce the preference income subject to tax. On this basis the amended return sought to reduce the minimum tax on preference income from \$489 to \$176 and claimed a refund of \$322.1/

On September 19, 1980, respondent disallowed appellant's claim for refund and this timely appeal followed.

Appellant's primary contention on appeal is that the tax preference income reported on her 1976 return should be adjusted by an amount equal to her excess itemized deductions. She argues that to the extent her itemized deductions exceeded her gross income, she did not receive any tax benefit on the excess itemized deductions as shown on the return. Appellant also argues that personal exemption credits for which no tax benefit was realized should be offset against tax preference income.

1/ Respondent correctly points out that the claimed refund was miscalculated. Under the figures supplied by appellant, the claimed refund should have been \$313, the difference between \$489 and \$176. Should appellant prevail, the amount of refund claimed will be reduced accordingly.

Appeal of Claire M. Holmes, Deceased

The issue and arguments raised by appellant with respect to imposing tax on preference income without allowing- an offset against such income equal to the amount by which the taxpayer's taxable income is less than zero has been previously considered and rejected by this board in the Appeal of James R. and Jane M. Bancroft, decided January **11, 1978**. For the reasons stated therein, we must conclude that appellant is not entitled to reduce the amount of tax preference income for the 1976 tax year by the amount of excess itemized deductions or a personal exemption credit from which no tax benefit was realized.

The second issue raised by appellant concerns whether the-provisions **of section** 17064.5, subdivision (f), of the Revenue and Taxation Code should be retroactively applied to appellant's 1976 return. Appellant argues that the spirit and the intent of the law were present in 1976; therefore, section 17064.5, subdivision (f), should be retroactively applied. For the reasons expressed below, it was clearly the intent of the legislature that the provisions of 17064.5 not be applied retroactively. Additionally, prior to 1977, itemized deductions were not includable in preference income; therefore, even if the statute could be given retroactive effect, the exclusion provisions now present in the law would not assist appellant.^{2/}

Section 17062 of the Revenue and Taxation Code provides for the imposition of a tax, in addition to other imposed taxes, on "items of tax preference in excess of the amount of net business loss for the taxable year." Section 17063, in effect during 1976, defined items of tax preference to include percentage depletion in excess of adjusted basis of the property involved and that portion of capital gains not taxed under regular income tax. Section 17063, as it was then drafted, did not include excess itemized deductions as an item of tax preference. Section 17064.6 of the Revenue and Taxation Code defines "net business loss" as the "adjusted gross income ... less the deductions allowed by section 17252 . . . only if such net amount is a loss."

^{2/} It is important to emphasize that appellant did not pay more preference tax, nor was she otherwise prejudiced, **because** her itemized deductions exceeded her gross income. For example, if appellant's itemized deductions had exactly equaled her gross income rather than exceeding it, her preference tax would have remained the same.

Appeal of Claire M. Holmes, Deceased

In 1977, as a result of the enactment of Assembly Bill 302 (Stats. 1977, ch. 1079), section 17063 was amended^{3/} to include excess itemized deductions as a tax preference item. At the same time, section 17063.2 was added to determine what constituted excess itemized deductions and subdivision (f) of section 17064.5 was added to provide for adjustment of tax preference items where no tax benefit had been gained from such tax preference item. All three of these sections were applicable to income years beginning January 1, 1977. Specifically, section 157 of Assembly Bill 302 provided as follows:

All sections of this act affecting changes to the Personal Income Tax Law, unless otherwise specified in such sections, shall be applied in the computation of taxes for taxable years beginning after December 31, 1976.

As such, we must conclude that it was clearly the express intent of the Legislature that the provisions of Assembly Bill 302 regarding tax preference items not be given retroactive effect.

For the reasons stated above, respondent's action in this matter must be sustained.

^{3/} Section 17063 was also amended in 1979; however, the subsequent amendments have no bearing on this appeal.

Appeal of Claire M. Holmes, Deceased

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Claire M. Holmes, Deceased, for refund of personal income tax in the amount of \$322 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day Of December , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

- William M. Bennett _____, Chairman

C o n H. a C o l l i s _____, Member

Ernest J. Dronenburg, Jr. _____, Member

Richard I. Nevins _____, Member

_____, Member